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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,326	01/29/2004	Jonathan Kleinsasser	80215-24202 ADB	1244

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ADE & COMPANY  
1700-360 MAIN STREET  
WINNIPEG, MB R3C3Z3  
CANADA

EXAMINER

HAYES, BRET C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/766,326

Applicant(s)

KLEINSASSER, JONATHAN

Examiner

Bret C Hayes

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-12, 14 and 15 is/are allowed.
- 6) ☒ Claim(s) 1-8, 13 and 16-22 is/are rejected.
- 7) ☒ Claim(s) 9 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claims 9 and 17 are objected to because of the following informalities: lines 19 and 4, respectively, "a tattoo mark" should be --the tattoo mark--. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5, 6, 8, 13, 16, 19, 21 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Re – claims 5, 13 and 21, line 3 of each, the recitation "and/or" obfuscates the claim. The claims should be revised to remove the "and/or" recitation and to include both possibilities, if necessary. Examiner suggests, ---...different locations of the hog within the confining cage and different dimensions of the hog, or any combination of said locations and dimensions--, for example.

5. Claims 6 and 22 recite the limitation "the retracted position" in line 3 of each. There is insufficient antecedent basis for this limitation in the claims.

6. Claims 8 and 16 recite the limitation "the front" in line 4 of each. There is insufficient antecedent basis for this limitation in the claims.

7. Claim 19, line 2, recites "...a cylinder which on the mounting assembly...", which is unclear due to the lack of a verb.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 4 – 7, 17 and 20 – 22 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,440,078 to McCrery, Jr. et al. (*McCrery*).

10. Re – claims 1 and 17, McCrery discloses the claimed invention including: an apparatus 10, comprising: a confining cage (mounting assembly, claim 17) 22, 24; at least one confining gate assembly 14; a tattoo head 20 having marking members; a drive mechanism *inter alia* 48, the drive mechanism 48 being mounted on the confining cage (mounting assembly, claim 17) 22, 24, via the gate assembly 14, and a control unit, see FIG. 5, for example.

11. Re – claims 4 and 20, McCrery further discloses: the apparatus 10 wherein the tattoo head 20 is mounted on an arm 44 which is pivotal relative to the confining cage (mounting assembly, claim 17) 22, 24.

12. Re – claims 5 and 21, McCrery further discloses: the apparatus 10 wherein the tattoo head 20 is carried on a float spring assembly 94.

13. Re – claims 6 and 22, McCrery further discloses: the apparatus 10 wherein there is provided an ink applicator 52, arranged to engage the tattoo head 20 by movement of the tattoo head 20 to a retracted position.

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14. Re – claim 7, McCrery further discloses: the apparatus 10 wherein the tattoo head 20 and drive mechanism 48 are carried on a mounting assembly *inter alia* 106 separate from the confining cage 22, 24 and mounted on the confining cage 22, 24.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 2, 3, 8, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCrery as applied above.

17. Re – claims 2, 3, 18 and 19, McCrery discloses the claimed invention including: a solenoid 48 which is mounted transversely to a wall of the confining cage (mounting assembly, claim 17) 22, 24 and the tattoo head 20; except for the drive mechanism 48 including an air cylinder/cylinder and the tattoo head 20 being mounted on a piston rod of the cylinder.

Re – the air cylinder/cylinder, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute an air cylinder/cylinder for a solenoid, since the equivalence of a cylinder and a solenoid for their use in the actuating art and the selection of any known equivalents to a solenoid would be within the level of ordinary skill in the art. See, for example, US Patent No. 5,009,511 to Sarko, col. 6, line 67 through col. 7, line 2, which states, “Of course, the hydraulic actuator 213 may be replaced with other actuation means such as, for example, a solenoid actuator, pneumatic actuator and the like.” So, it would be an obvious modification to one of ordinary skill in the art to substitute actuation means.

Re – the head **20** being mounted on a piston rod of the cylinder, it would have been obvious to one having ordinary skill in the art at the time the invention was made to so arrange the actuator set up, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

18. Re – claim 8, McCrery discloses the claimed invention except for the location of the head **20** being at a rear of the cage **22, 24**. It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the head **20** at a rear of the cage **22, 24**, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

***Allowable Subject Matter***

19. Claims 9 – 12, 14 and 15 are allowed.

20. Claims 13 and 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

21. The following is an examiner's statement of reasons for allowance: the prior art of record neither discloses nor fairly teaches the recited limitations of the claimed invention. The prior art discloses the marking apparatus as set forth above. However, the prior art does not disclose nor fairly teach a weigh scale, a sorting gate assembly and a control unit which operates to sort the hog after being marked to a market pen or a retaining pen as determined by its weight.

22. This statement is not intended to necessarily state all the reasons for allowance or all the details why the claims are allowed and has not been written to specifically or impliedly state that all the reasons for allowance are set forth (MPEP 1302.14).

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

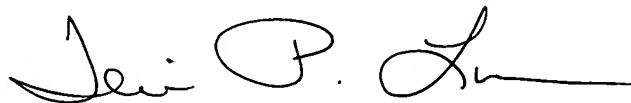
***Conclusion***

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

10/27/04

A handwritten signature in black ink, appearing to read "Teri P. Luu", with a long horizontal flourish extending to the right.

**TERI P. LUU**  
**SUPERVISORY PRIMARY EXAMINER**